

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MILES LACROSS,

File No.: 10CV3922 JNE/LIB

Plaintiff,

vs.

CITY OF DULUTH, A MINNESOTA MUNICIPALITY; OFFICER ANTON MARC, INDIVIDUALLY AND IN HIS CAPACITY AS A DULUTH POLICE OFFICER; SGT. FOGERTY, INDIVIDUALLY AND IN HIS CAPACITY AS A DULUTH POLICE OFFICER; LT. DAN CHICOS, INDIVIDUALLY AND IN HIS CAPACITY AS A DULUTH POLICE OFFICER; AND UNKNOWN/UNNAMED POLICE OFFICERS OF THE CITY OF DULUTH; ST. LUKE'S HOSPITAL, A MINNESOTA ENTITY; AND DR. PETER M. STENEHJEM, MD,

Defendants.

ANSWER OF DEFENDANT DAN FOGARTY

Defendant Dan Fogarty responds to the allegations of the Complaint as follows:

1. Unless admitted or otherwise qualified, denies the allegations of the Complaint.
2. Admit that on September 17, 2006 he was employed by the City of Duluth as a licensed peace officer.

3. Deny that he was on duty on September 17, 2006 during the times the alleged events described in the Complaint allegedly occurred.
4. Deny that he was involved in the alleged events described in the Complaint. To the extent they are asserted against the other defendant, he is without sufficient information to respond; therefore, they are denied.
5. Because he was not involved in the alleged events described in the Complaint, deny the allegations contained in the various counts of the Complaint.

DEFENSES

6. The Plaintiff has asserted his claims against Defendant Fogarty without any factual support and without having conducted an adequate investigation of the public record which would have informed Plaintiff or his attorney that Fogarty was not involved in the alleged events. Therefore, Plaintiff and his counsel have violated Rule 11, Fed.R.Civ.P. Defendant Fogarty reserves his right to seek sanctions pursuant to Rule 11 and attorney fees pursuant to 42 U.S.C. § 1988.
7. Plaintiff has asserted claims that fail to state a claim upon which relief may be granted.
8. Defendant Fogarty is protected by qualified immunity.
9. Defendant Fogarty is protected by official immunity.
10. Plaintiff failed to put Defendant Fogarty on notice of the claims arising under state law as required by MSA §466.05, subd. 1. Defendant Fogarty's ability to defend himself has been prejudiced as a result; therefore, the claims are subject to dismissal.

WHEREFORE, Defendant Fogarty seeks an order of the court as follows:

- a. Granting judgment in favor of Defendant Fogarty and dismissing this action with prejudice.
- b. Awarding Defendant Fogarty his costs, disbursements and fees authorized by law.
- c. Awarding Defendant Fogarty sanctions and attorney fees pursuant to Rule 11, Fed.R.Civ.P. and 42 U.S.C. §1988.
- d. Awarding Defendant Fogarty other equitable relief as the court deems just.

Dated this 10th day of January, 2011

Respectfully submitted,

s/M. ALISON LUTTERMAN
M. ALISON LUTTERMAN
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